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IN THE
Supreme Court of the United States

OCTOBER TERM, 1964

No. 69

RONALD L. FREEDMAN,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

The Appellee generally accepts the Statement of the Case made by Appellant, but wishes to make the following additions and corrections thereto.

When Appellant telephoned Mrs. Holland at the office of the Maryland Board of Censors (hereinafter referred to as the "Board") on November 1, 1962, to announce his intention to exhibit a film which had not been presented for licensing, she told him this would be in violation of the law, but he replied that that was his purpose, in order to test the constitutionality of motion picture censorship (R. 7). When Mrs. Holland served a violation notice on Freedman after she had seen the film, he accepted it in the presence of his attorney (R. 8).

Appellant is well acquainted with the administrative machinery of the Board (R. 15).

The Board's reviewers do not look at *every* movie that comes into Maryland, except newsreels, as stated on page 6 of Appellant's Brief. Rather, they look at all movies, other than newsreels, which are to be exhibited for commercial purposes (R. 27, 45; Section 23 of Article 66 of the Maryland Code, App. 13).

The questioning, at trial, of Mr. Mason and Mrs. Schecter, established only that counsel for the Appellant has a more detailed familiarity with obscenity litigation than do these lay Board members:

Although the Board's receipts have exceeded its disbursements in most years since 1920 (Def. Ex. No. 5; R. 22, 62), the fiscal years ended June 30, 1959, and June 30, 1962, both showed a net loss of revenue to the State, as would the year ended June 30, 1961, had it not been for the \$1,577.65 unexpended appropriation (R. 62, 67, 73).

QUESTIONS PRESENTED

1. Can a movie house operator who, in brazen and deliberate defiance of statutory law, publicly exhibits a film without having first submitted it to the Maryland State Board of Censors and secured a seal of approval therefor, alchemize the innocuous nature and content of that film into a freedom-of-speech defense to his criminal prosecution?

2. Is Maryland's system of regulating the motion picture business — by requiring films which are to be commercially exhibited first to be submitted to an administrative board for preview and licensing — utterly repugnant to a movie house operator's rights of free speech?

3. Does Appellant have standing to challenge any portion of Article 66A of the Maryland Code other than Section 2?

ARGUMENT

I.

Introduction

The present controversy is a fabrication with which Appellant hopes to destroy the criminal sanction of Maryland's motion picture censorship law and with it the functions of every administrative film review board in the United States. Let there be no doubt about it. His defiant exhibition of an innocuous film directly inviting criminal prosecution was a maneuver executed to permit Appellant's brief in this Court to radiate a bright innocence of subject matter with the aid of which he now seeks to surprise and overwhelm all those who have tried with earnest high purpose, by varying means of film preview, to prevent the unscrupulous commercial exploiters of obscenity from gaining uncontrollable license to produce and exhibit what they will. This is the Armageddon of motion picture censorship. If Appellant's maneuver is successful, by exhibiting a bland film without submitting it to the Board, he will have gained the right to exhibit an obscene film without submitting it to the Board, a Trojan Horse deception already thoroughly appreciated by the industry. See *The Film Daily*, Oct. 2, 1964, p. 1, col. 2.

And this is not really the case of Ronald L. Freedman of Baltimore. He is just a set piece for his distributor, which happens to be Times Film Corporation (R. 6), the very same organization that, with the very same chief counsel, presented the last motion picture censorship case considered by this Court.

II.

The Maryland Court of Appeals Correctly Held, on Authority of *Times Film Corporation v. Chicago*, that the Maryland Censorship Law Is Not Void on its Face.

A.

The TIMES FILM decision controls this appeal.

But for the deadly seriousness of this litigation and the observation that "[w]hat is one man's amusement, teaches another's doctrine" (*Winters v. New York*, 333 U.S. 507, 510, 92 L. Ed. 840, 847 [1948]), one might find diversion in Appellant's busy efforts to convince this Court that there are compelling distinctions between this appeal and the petition of *Times Film Corp. v. Chicago*, 365 U.S. 43, 5 L. Ed. 2d 403 (1961).

Actually, the present litigation is the second round, almost a reprise, of the *Times Film* case. The personalities and their mission have not changed. Only the tactics are different.

There, an application for a permit was made and the license fee tendered but submission of the film, "Don Juan", for examination was refused. Here, Appellant refused to do any of these things and argues that the license fee is a tax upon the exercise of free speech.

There, the distributor initiated litigation by filing a complaint in a federal district court seeking injunctive relief against having to submit to consorship. Here, the distributor's licensee began the litigation by announcing his intention to exhibit an unlicensed film — "Revenge at Day-break" — for the purpose of "challenging the constitutionality of motion picture censorship" (R. 7).

There, no one knew, at least officially, whether the film was or was not legally obnoxious and the statutory stand-

ards for review were not attacked, the distributor arguing that it did not make any difference, that the film was presumed to be nonobscene*, and that no prior submission for examination could constitutionally be required. Here, the distributor's licensee has undertaken, deliberately and elaborately, both to establish the innocence of the film as a matter of record and to demonstrate that the standards of review in Maryland are unenforceably vague.

These changes in presentation are the only identifiable distinctions between *Times Film* and this case. The Appellant asserts that these shifts of emphasis make *Times Film* "vastly different". But, in truth, they are a disguise, imperfectly hiding the same cause.

The claim advanced here is intrinsically indistinguishable from the claim advanced there: that "this concrete and specific statutory requirement, the production of the film at the office of the [Board] for examination, is invalid as a previous restraint on freedom of speech" (365 U.S. at 46, 5 L. Ed. 2d at 405). The claim was there presented directly. It is here sought to be presented indirectly — by contending that criminal prosecution to coerce submission to the Maryland film licensing statutes imposes an impermissible burden upon free speech. But even the American Civil Liberties Union and Maryland Branch, ACLU, *Amici Curiae*, candidly recognize the identity between the substance of this appeal and that of the *Times Film* case. At the outset of their presentation they state the question presented to be (*Amici Brief*, p. 2):

"Whether a state may restrain the public exhibition of a motion picture in advance of a judicial determina-

* See footnote 4 at pp. 13-14 of Appellant's Jurisdictional Statement. That this Court could have considered "Don Juan" to be "the vilest of pictures" was an extreme position "that petitioner . . . argued at one time in the case". 365 U.S. at 55, 5 L. Ed. 2d at 411.

tion that the motion picture is of a character which governmental authority may properly suppress."

This clearly reflects the oneness of purpose in the two cases: to eliminate, by judicial order, the necessity for prior administrative licensing of motion picture films.

To assert that the State is here the moving party gains the Appellant no advantage. As a statement of fact, the assertion is compromised by Appellant's invitation to prosecution for the announced purpose of testing the constitutionality of censorship. As a distinction in law it also fails, because both the purpose of litigation (from the viewpoint of Freedman as exhibitor as well as Times Film Corporation as distributor) and the national effect of this Court's decision are unchanged from the *Times Film* presentation.

To assert that the subject film "would have been approved had it been submitted for licensing" is also ineffective, because, although this Court's decision in *Times Film* may have been additionally supported by the lack of record evidence as to the nature and content of the film there at issue, the majority opinion did not depend upon that finding. "Moreover" was the word used by Mr. Justice Clark to introduce his discussion of subject matter (365 U.S. at 46, 5 L. Ed. 2d at 406). It is the word for which the three omission dots have been substituted at the beginning of the second quotation on page 15 of Appellant's Brief.

The presence or absence in this record of evidence as to the nature and content of the unlicensed film is a wholly neutral circumstance in the consideration of whether *Times Film* controls this case, because the issue there professedly decided — that there is no constitutional freedom to exhibit a motion picture without any prior review by governmental

authorities — necessarily means, in conversion, that one cannot with impunity defy a statutory requirement that every commercial film be submitted for examination and licensing prior to its exhibition before the paying public. This was acknowledged by the majority when Mr. Justice Clark stated the appellant's claim to be a challenge to the statutory requirement of submission for examination (365 U.S. at 45-46, 5 L. Ed. 2d at 405). This was also acknowledged by the dissenting justices when Mr. Chief Justice Warren, speaking for them, restated the issue thus (365 U.S. at 55, 5 L. Ed. 2d at 411):

"... whether the City of Chicago — or, for that matter, any city, any State or the Federal Government — may require all motion picture exhibitors to submit all films to a police chief, mayor or other administrative official, for licensing and censorship prior to public exhibition within the jurisdiction.

"The Court does not even have before it an attempt by the city to restrain the exhibition of an allegedly 'obscene' film ..."

(365 U.S. at 67, 5 L. Ed. 2d at 418):

"... The inquiry, as stated by the Court, but never resolved, is ... whether licensing, as a prerequisite to exhibition, is barred by the First and Fourteenth Amendments."

This Court held in *Times Film* that a statutory requirement of preview of all films prior to public exhibition was not constitutionally void on its face. The Maryland Court of Appeals took proper cognizance of that holding in the present litigation. *Freedman v. State*, 233 Md. 498, 504, 197 A. 2d 232, 235 (1964). Accordingly, no place remains for an argument that the use of criminal sanctions to enforce the requirement of preview is forbidden whenever it can later be demonstrated that the unreviewed film neither excites nor incites. This was effectively noted by

the justices who dissented in *Times Film* when Mr. Chief Justice Warren observed that even after submission of a film and a refusal to license, "there is ordinarily no defense to a prosecution for showing the film without a license". (Emphasis supplied. 365 U.S. at 74, 5 L. Ed. 2d at 421-422.) And, as the Court concluded therein (365 U.S. at 50, 5 L. Ed. 2d at 408):

"... It is not for this Court to limit the State in its selection of the remedy it deems most effective to cope with such a problem, absent, of course, a showing of unreasonable strictures on individual liberty resulting from its application in particular circumstances."

B.

The TIMES FILM decision should be reaffirmed.

Because both the Appellant and the *Amici Curiae* have here undertaken a wide, if unconvincing, assault upon the whole legislative structure of movie censorship and because four justices of this Court indicated their sympathy with the purposes of such an assault by joining in dissent from the *Times Film* holding, the following observations are pertinent.

Neither the evocation of 17th century English history nor the platooning of 20th century American free speech decisions provides any real strength to their assault line because, for all of the brave language thus made available, none of it has strength and meaning in the context of the present battle.

The struggle of the English press for freedom from license is an early chapter in the long history of the fight to express unpopular religious, political and economic opinions without regulation beyond that necessary to keep the peace. And it is the more recent portion of this history which puts in common ranks such constitutional eminences

as the American Press Company, J. M. Near, Newton Cantwell and R. J. Thomas. Many arguments have been advanced for the constitutional protection of newspapers, labor union organizers, and the most obnoxious evangelists, but the one which has significant and enduring value is that which spares the critics and the dreamers from prior restraint simply because, in the areas of religion, politics and economics, there is no acceptable alternative compatible with our national concept of organized democratic society.

As to commercial motion picture exhibition, however, none of this history has any relevance. The dominant evil in such business, to which various legislative bodies have addressed themselves, is mindless obscenity, something in which there is ample profit but no art, no advocacy, no social criticism, no dream of a better world. Those who hang on the pornographic periphery of the motion picture business have no communality with those whose confrontations with government have previously established constitutional benchmarks along the survey line of free speech.

The newspaper cases are historically *sui generis*, reflecting a cultural tolerance and trust distilled from centuries of experience, in England as well as America, with the role of the journalist in a democratic system of government, and their doctrine has nothing to do with the suppression of obscenity, as the Court specifically recognized in *Near v. Minnesota*, 283 U.S. 697, 716, 75 L. Ed. 1359, 1367 (1931).

Also inapplicable are the numerous permit cases which have almost invariably involved either the ordained ministers of Jehovah or labor union organizers. The thrust of those cases (e.g., *Schneider v. State*, 308 U.S. 147, 84 L. Ed. 155 [1939]; *Cantwell v. State*, 310 U.S. 296, 84 L. Ed. 1213 [1940]; *Staub v. Baxley*, 355 U.S. 313, 2 L. Ed. 2d 302 [1958])

was against ill-defined, far-ranging discretion held by the licensor. *Bantam Books v. Sullivan*, 372 U.S. 58, 9 L. Ed. 2d 584 (1963), which disabled Rhode Island's Commission to Encourage Morality in Youth, is a lineal descendant of these decisions because it was based upon the vagueness of the Commission's statutory mission and the total absence of safeguards against the suppression of nonobscene matter. By present contrast the Maryland Board in its authority not to approve a motion picture is plainly limited to films which either tend to incite to crime (a rarity) or are obscene. The State can only presume that this Court will not voluntarily declare its bankruptcy as to the libidinous by here holding that even it, hence no one, can determine what is or is not obscene in motion pictures.

If the Court is here prone to reconsider the constitutional soundness, *vel non*, of movie censorship, account must be taken of the changing character of the commercial film. What is known as the "family movie" has neared extinction, while the western and mystery have been abandoned to television. Production is sustained by increasing reliance upon and preoccupation with sex and violence. Report, New York State Joint Legislative Committee to Study the Publication and Dissemination of Offensive and Obscene Material (Legislative Document No. 77 — 1962), pp. 48, 63. This is a subject of genuine concern to intelligent men of good will. Maryland, like many other jurisdictions throughout the country (see Appendices to this and *Amici* briefs), has satisfactorily relied for almost 50 years on administrative preview of motion pictures as the principal means of preventing the display of this most perniciously memorable form of published obscenity. There is nothing in the present record to show that the Board has acted or has statutory leeway in which to act in an arbitrary, capricious or just unreasonable fashion. To hold that the system

of administrative preview of films is now, after a half century of valuable service, constitutionally unavailable in the hour of perhaps its greatest need will do nothing to advance the cause of free speech in America but will serve only to facilitate the distribution and exhibition of obscene movies.

Assuming that obscenity is identifiable and that the obscenity of any given film is an issue of law which a court may decide, that is no basis for the contention that only a court should make the decision that, in effect, only a judge knows an obscenity. Such an argument is patently ridiculous and needlessly impugns the whole administrative process.

On balance, therefore, the free speech right of a motion picture theater operator to uncontrolled commercial film exhibition cannot outweigh the community's interest in preventing the display and commercial exploitation of obscenity — speech beyond the pale of constitutional freedom — in its most compelling published form.

Recognizing, as did Mr. Justice Jackson in his dissent to *Kunz v. New York*, 340 U.S. 290, 308, 95 L. Ed. 280, 291 (1951), that "[t]he Court as an institution not infrequently disagrees with its former self or relies on distinctions that are not very substantial", Maryland submits that the instant appeal presents a most inappropriate occasion for such activity and urges this Court to reaffirm its stand in *Times Film v. Chicago*, *supra*, which affirmatively answered the pendant question of *Burstyn v. Wilson*, 343 U.S. 495, 506, 96 L. Ed. 1098, 1108 (1952), "whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films".

III.

**Appellant Has No Standing in this Appeal to Challenge
the Licensing Standards of Article 66A.**

Under the *Times Film* decision, the Maryland motion picture licensing statute is not void on its face. Appellant cannot, therefore, properly attack any standard of administrative review in this proceeding because, by refusing to submit "Revenge at Daybreak" for approval, he has failed to establish the case and controversy necessary to judicial consideration of such standards. As this Court indicated in *Times Film*, 365 U.S. at 50, 5 L. Ed. 2d at 408, the way to dispute standards of film review not patently unworkable is to have them applied to specific motion pictures and to appeal from any unsatisfactory application. He who would complain against standards and procedures which are not *ipso jure* defective must first show that those standards or procedures have been directly and unfairly applied against his rights in the litigation at hand. Appellant elected not to do this and he is bound in this Court by that election.

Staub v. Barley, 355 U.S. 313, 2 L. Ed. 2d 302 (1958), is not contrary authority, because this Court there found that the municipal ordinance which required organizers to obtain a permit from the Mayor and Council could in no wise be constitutionally enforced because issuance lay in the uncontrolled discretion of that group. Only because the ordinance was wholly void on that account was it assailable *in toto* on review of a conviction for failure to apply for a permit.

IV.

The Maryland Statutory Standards for Determining What Motion Pictures Are Obscene or Tend to Incite to Crime Are Not Constitutionally Defective.

Even if the State were to concede — which it does not — that Appellant may in this proceeding challenge the licensing standards contained in Section 6 of Article 66A of the Maryland Code, those standards are not so vague and indefinite as to attract constitutional censure.

The standard for determining obscenity is stated in definitive form in subsection (b) of Section 6:

“For the purposes of this article, a motion picture film or view shall be considered to be obscene if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever other merits the film may possess.”

This definition was enacted by Chapter 201 of the Laws of Maryland of 1955 and presumably came from the opinion of Illinois' Chief Justice Schaefer in *ACLU v. The City of Chicago*, 3 Ill. 2d 334, 121 N.E. 2d 585 (1954), in which, after considerable review of the subject, it was stated (592):

“We hold, therefore, that a motion picture is obscene within the meaning of the ordinance if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess. In making this determination the film must be tested with reference to its effect upon the normal, average person....”

This definition is wholly compatible with this Court's constitutional definition enunciated in *Roth v. United States*, 354 U.S. 476, 489, 1 L. Ed. 2d 1498, 1509 (1957) —

"whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest — and reaffirmed, with explanations, in *Jacobellis v. Ohio*, U.S. . . . , 12 L. Ed. 2d 793, 800 (1964).

This Court, in *Roth*, affirmed convictions under anti-obscenity statutes considerably less precise than Section 6(b), *supra*, noting (354 U.S. 491; 1 L. Ed. 2d 1510-1511):

"Many decisions have recognized that these terms of obscenity statutes are not precise. This Court, however, has consistently held that lack of precision is not itself offensive to the requirements of due process. ' . . . [T]he Constitution does not require impossible standards'; all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. . . . ' . . . These words, applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the conduct proscribed and mark ' . . . boundaries sufficiently distinct for judges and juries fairly to administer the law . . . '."

The first portion of subsection (c) of Section 6 is basically repetitive of subsection (b), stating:

"For the purposes of this article, a motion picture film or view shall be considered to be of such a character that its exhibition would tend to debase or corrupt morals if its dominant purpose or effect is erotic or pornographic; or if it portrays acts of sexual immorality, lust or lewdness, . . ."

This provides legislative affirmation that erotica and pornography tend to debase and corrupt morals. The observations of Illinois' Chief Justice Schaefer are again helpful (121 N.E. 2d at 592, 593):

"So far as the term 'immoral' is concerned we think that when employed, as here, to describe a basis upon

which to impose a prior restraint upon freedom of expression, it must be regarded as little more than a synonym for 'obscene'. Such, indeed, appears to have been the sense in which the legislative bodies used the term. . . . the term 'immoral' in the ordinance must be construed as referring to that which is immoral because it is obscene. . . ."

The remaining portion of subsection (c), which embraces a film "if it expressly or impliedly presents [acts of sexual immorality, lust or lewdness] as desirable, acceptable or proper patterns of behavior", was judicially limited but not repealed by *Kingsley Corp. v. Regents of U. of N.Y.*, 360 U.S. 684, 687, 3 L. Ed. 2d 1512, 1516 (1959), which reversed the Regents' denial of a license to "Lady Chatterly's Lover", a concededly obscenity-free film, based solely upon its alluring portrayal of adultery. The State suggests that this Court would not receive with equivalent favor a film which either advocated or alluringly portrayed pederasty, fellatio, bestiality or any other perversion in the "*crimen innotinatum*" class.

Finally, subsection (d) states:

"For the purposes of this article, a motion picture film or view shall be considered of such a character that its exhibition would tend to incite to crime if the theme or the manner of its presentation presents the commission of criminal acts or contempt for law as constituting profitable, desirable, acceptable, respectable or commonly accepted behavior, or if it advocates or teaches the use of, or the methods of use of, narcotics or habit-forming drugs."

The State does not understand this definition to be unclear, and the Appellant has addressed no part of his brief to that issue. The Maryland Court of Appeals has considered this subsection without impugning its constitutionality. In *United Artists v. Bd. of Censors*, 210 Md. 586,

124 A. 2d 292 (1956), it held that "The Man with The Golden Arm" did not teach and advocate the use of narcotics.

V.

Neither the Sexless Nature of the Film Nor the Fee Chargeable for its Review Nor the Time Consumed in its Review Provides a Bar to Appellant's Conviction.

A considerable portion of the Appellant's brief is devoted either to speculation over what would have happened if he had submitted the subject film to the Board for review or to reverie about what has happened to him in other cases. Little of this is significant and none of it is relevant, serving only to confuse the one issue genuinely in controversy — the continued effect of the *Times-Film* decision.

This resultant confusion is illustrated by the emphatic statement on page 21 of his brief that the innocence of "Revenge at Daybreak" prevents Maryland from constitutionally *suppressing* the film. This statement has no meaning because Appellant by his own calculated refusal to submit the film to the Board prevented even the possibility of suppression. He is being punished for that refusal and that refusal alone. Nothing whatever is being suppressed.

Then, the argument proceeds, even if "the crime of non-submission is an appropriate adjunct to a valid system of censorship" the innocent nature of the instant film presents a complete defense, under authority of *Ex Parte Endo*, 323 U.S. 283, 89 L. Ed. 243 (1944). But that was a habeas corpus proceeding which determined only that an American citizen of Japanese ancestry was entitled to release from detention after her loyalty had been con-

ceded by the federal government. It assumed that initial detention was authorized after evacuation. 323 U.S. at 301, 89 L. Ed. at 255. It did not hold, therefore, that the petitioner was entitled to constitutional freedom from the wartime relocation program. Without this holding, the case has no present analogistic value.

A closer analogy equates the Appellant to the cranky home owner who refuses to fill up his private well and connect to the public water system, arguing that his well water is purer than that in public pipes. The production of comparative water samples demonstrating his thesis gives him no defense to the misdemeanor of failure to connect.

Similarly, Appellant's tortured argument that the schedule of fees set forth in Section 11 of Article 66A (App. 6-7), which is based on film footage and frames per foot, constitutes a tax on free speech has no place in this appeal. No fee has been paid or tendered with reference to the subject film. And this is not a declaratory judgment procedure challenging imposition of the fee. Indeed, even if Section 11 were properly at issue, the fees there set out cannot possibly be compared to the receipts license tax struck down in *Grosjean v. American Press Co.*, 297 U.S. 233, 80 L. Ed. 660 (1936), if only because the Maryland fees are not intended to restrict the exhibition of motion pictures. They have nothing in common with the historically "obnoxious taxes" there discussed and found companion to the tax proscribed. 297 U.S. at 248, 250-251, 80 L. Ed. 667, 669. Nor do they compare to the "flat license tax" on solicitors found offensive when applied to Jehovah's army of evangelists in *Murdock v. Pennsylvania*, 319 U.S. 105, 112, 87 L. Ed. 1292, 1298 (1943).

Nor is any soundness added to Appellant's argument by the contention that the results of the Board's existence and activity, in terms of the number of films denied approval, are "indefensibly disproportionate" to the costs of administration. First, the contention itself is irrelevant to consideration of the reasonableness of the fee charged, because that reasonableness is subject to review only in terms of its relationship, in gross proceeds, to the Board's operating expenses, and not to results of any kind. The fee would not be unreasonable if all films were licensed as submitted. Second, the statistical measurement used by Appellant is not reliable as an indicator of the result desired. The number of modifications ordered and licenses refused does not take into account the films which were not submitted for review simply because their distributors knew them to be obscene and hence not entitled to be licensed.

An additional confusion *vice* contention is Appellant's proposition that, since the Board may take more than a day to process a film, the Maryland review system causes unwarranted delay in the exercise of free speech. This is an absurd notion. The Appellant is well aware that there is in fact no delay in exhibition unless the film is not licensable, that most films are presented well in advance of their showing dates and, if approved, are cleared within 24 hours. Even if it were the practice of the Board rigidly to require compliance with Rule 4 (Def. Ex. No. 1; R. 13, 57) and to hold films a full 48 hours after delivery, there would be no delay of the sort necessary to demonstrate constitutional unreasonableness. It is noteworthy that, although Appellant has raised the issue of delay, he has nowhere attacked the fairness or orderliness of the Board's administrative procedures, finding fault in

them only because they lack identity with those favorably reviewed in *Kingsley Books v. Brown*, 354 U.S. 436, 1 L. Ed. 2d 1469 (1957).

Finally, the State challenges as manifestly unwarranted Appellant's statement that as a matter of fact the Maryland Board will not "recognize the innocence of each unobjectionable film it processes" but, rather, "tends to censor". There is no basis in this or any other record for such an assertion. It is *ad hominem* argument beyond the indulgent limits of appellate advocacy. It is gratuitously disrespectful of the integrity of the members of the Maryland Board, each of whom is trying earnestly to perform the duties of public office, as prescribed by the legislature and interpreted by the judiciary, to the best of his ability.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals of Maryland affirming Appellant's conviction by the Criminal Court of Baltimore should be affirmed.

Respectfully submitted,

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APPENDIX

In addition to the localities listed in the Appendix to the Brief of American Civil Liberties Union and Maryland Chapter, ACLU, *Amici Curiae*, there appear to be film review boards or authorities in the following municipalities (The Film Daily 1964 Year Book of Motion Pictures, 703-706 [New York, 1964]):

Bellingham, Washington
Bessemer, Alabama
Chester, South Carolina
Geneva, Illinois
Glendale, California
Milwaukee, Wisconsin
Port Arthur, Texas
San Jose, California
Tampa, Florida
Valdosta, Georgia
Waterloo, Iowa.